

1 IN THE UNITED STATES DISTRICT COURT.  
2 FOR THE DISTRICT OF NEW JERSEY  
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,  
5 HOWARD HOLLANDER, THEODORE CASE,  
6 AND MICHAEL FINUCAN, individually  
7 and on behalf of all others  
8 similarly situated,  
9 Plaintiffs,

10 V.

VOLUME 8  
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,  
12 Defendant.

CAMDEN, NEW JERSEY  
JUNE 20, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS  
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD  
17 BY: NICOLE M. ACCHIONE, ESQ.  
18 AND: LISA J. RODRIGUEZ, ESQ.  
19 AND  
20 GREEN JACOBSON, P.C.  
21 BY: ALLEN PRESS, ESQ. (MO. BAR)  
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)  
23 For the Plaintiffs.

24 ARCHER GREINER  
25 BY: STEVEN FRAM, ESQ.  
AND  
KATZ & RANZMAN  
BY: DANIEL M. KATZ, ESQ.  
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBERG, ESQ.  
IN-HOUSE COUNSEL FOR ALPA.

1           Pursuant to Section 753 Title 28 United States  
2 Code, the following transcript is certified to be an  
3 accurate record as taken stenographically in the  
4 above-entitled proceedings.

5                           S/     LYNNE JOHNSON

6                           Lynne Johnson, CSR, CM, CRR  
7 Official Court Reporter  
8  
9

10                   LYNNE JOHNSON, CSR, CM, CRR  
11                   OFFICIAL COURT REPORTER  
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1 THE COURT: Good morning, everybody.

2 Tell me what the order of march is today.

3 MR. PRESS: Your Honor, we will begin by resuming  
4 and concluding the video clip from Tom Rachford. We will  
5 then proceed to Mark Hunnibell, John Clark, Jerome  
6 Mugerditchian.

7 THE COURT: Just a minute. Rachford we will  
8 complete.

9 MR. PRESS: Yes.

10 THE COURT: Then Hunnibell.

11 MR. PRESS: Hunnibell.

12 THE COURT: Yes.

13 MR. PRESS: John Clark.

14 THE COURT: Okay.

15 MR. PRESS: Jerry Mugerditchian.

16 THE COURT: Yes.

17 MR. PRESS: Seth Rosen.

18 THE COURT: Seth Rosen.

19 MR. PRESS: Ron Rindfleisch, 2006.

20 THE COURT: There were two depositions.

21 MR. PRESS: There was a follow-up in 2008 which I  
22 don't think we will get to today.

23 THE COURT: Only 2006. Now, for Hunnibell, are  
24 there any issues remaining open?

25 MR. KATZ: I think there are, your Honor. We have.

1 THE COURT: Let me get it.

2 Clark, are there any issues open with Clark?

3 MR. KATZ: Yes.

4 THE COURT: I thought there were just a few.

5 MR. KATZ: There are just a few.

6 THE COURT: There aren't too many.

7 MR. KATZ: There are three items that relate to  
8 spoliation and redactions.

9 THE COURT: I am looking for what I what I have  
10 notes on that are open.

11 On pages 42, 43, 44, 45, 46, 47, 48, up through 49,  
12 line 8, I think those objections have all been moot you had  
13 because I think those pages were withdrawn by the plaintiff.

14 MR. KATZ: Yes, your Honor.

15 THE COURT: I also objected to some stuff I thought  
16 wasn't designated to them. You objected to 49 line 15 to 49,  
17 25. I don't see that as being designated by them.

18 MR. KATZ: It printed out in our version of what  
19 they plan to play. Which took --

20 THE COURT: Do you have that?

21 MR. PRESS: It is out.

22 THE COURT: I just have it, it has never been  
23 designated in the copy I have.

24 MR. KATZ: We objected up to 50, 20, up to 51, 5,  
25 in fact. Is that not in? Up to pages 51, line 5.

1 THE COURT: Well, here is what I have. They  
2 designated lines 1 through 4. On page 50. Right? Mr.  
3 Press.

4 MR. PRESS: I am sorry, Judge.

5 THE COURT: You designated lines 1 through 4.

6 MR. PRESS: On page 50?

7 THE COURT: Yes.

8 MR. PRESS: Yes.

9 THE COURT: I am leaving that in. That is okay.  
10 You also designated line 10 to 20.

11 MR. PRESS: Yes.

12 THE COURT: I am leaving that in. Okay. I find if  
13 you do not designate line 21, page 50, to line 6, page 51.

14 MR. PRESS: To line 5, 51, that is true.

15 THE COURT: Line 5, actually it is a yellow line.  
16 All right. I I haven't omitted, I don't even find it  
17 designated.

18 MR. PRESS: It wasn't.

19 THE COURT: Okay. I find that you, it doesn't show  
20 on mere here, that you did designate page 51 line 7 to 25.

21 MR. PRESS: Yes.

22 THE COURT: And also page 52 line 1 to 19.

23 MR. PRESS: Yes.

24 THE COURT: So that, that is okay, that wasn't  
25 objected to.

1                   Okay.

2                   MR. KATZ: The next objection is on page 109, your  
3 Honor.

4                   THE COURT: I am not going to go through stuff you  
5 omitted, you omit add whole bunch of stuff. It wasn't  
6 objected to. The fact that you chose to omit it, it is up to  
7 you.

8                   MR. PRESS: Yes.

9                   THE COURT: What is the next page?

10                  MR. KATZ: 109, your Honor. We objected to line 16  
11 to 19 dealing with some redactions.

12                  THE COURT: I have an objection, 109, line 9 to 16.  
13 I am sustaining that objection. Page 109, line 16 to 19.

14                  MR. KATZ: Thank you, your Honor. I think the  
15 objection we had on page 122 has been eliminated by the  
16 deletions over the weekend.

17                  THE COURT: Let me check.

18                  I have line -- which they designated from page 120,  
19 line 19, to page 122, line 14.

20                  MR. KATZ: Over the weekend they dropped out page  
21 122, I think.

22                  THE COURT: I don't think so. What I have is that  
23 you objected to line 8 through 14.

24                  MR. KATZ: Correct.

25                  THE COURT: And I sustained that objection. The

1 rest of it was okay. I, they did put it in. I have them  
2 putting in from 128, 19, 120, 19 -- well, he went all the  
3 way, line 14. Now he can go to line 7 on page 122.

4 MR. KATZ: That takes care of our objections.

5 THE COURT: Do you have that, Mr. Press?

6 MR. PRESS: I am not clear on what objection you  
7 just sustained, your Honor.

8 THE COURT: Only six lines, 7 lines on page 122, 8  
9 through 14.

10 MR. PRESS: Okay. Withdrew that, Judge.

11 THE COURT: I just have a note, if you withdrew it,  
12 so be it.

13 MR. KATZ: It was an email over the weekend.

14 THE COURT: I got the emails over the weekend.

15 MR. KATZ: With regard to Clark we have a number of  
16 additions we wanted to put in. He is a third party, not an  
17 ALPA witness.

18 THE COURT: You want to put them in when?

19 MR. KATZ: We wanted to add them into the  
20 transcript. They have always been in our counter  
21 designations of the record since the joint pretrial.

22 THE COURT: My copy, you have on the front in the  
23 code green for add-ons, right.

24 MR. KATZ: I believe so.

25 MR. PRESS: I didn't see any.

1 THE COURT: You have counter designations in  
2 orange.

3 MR. PRESS: I didn't see any.

4 THE COURT: I didn't see any either. Not one.

5 MR. KATZ: I suppose we can play them as part of  
6 ALPA's case.

7 THE COURT: What you want to put in as part of your  
8 own case, that is up to you at the time. I didn't see any  
9 counter designations in Clark, even though there was a code  
10 on the front for them. I didn't see any.

11 MR. KATZ: I am not sure they didn't make it, Judge  
12 Irenas, we had them in the original.

13 THE COURT: They are not here.

14 MR. KATZ: If they are not there, we will just play  
15 them as part of our case in chief.

16 THE COURT: Now, Hunnibell.

17 What is the date of the deposition of Hunnibell?

18 MR. PRESS: October 24, '06.

19 THE COURT: Was there just one volume of Hunnibell?

20 MR. PRESS: Yes.

21 THE COURT: Read me your objections.

22 MR. KATZ: Page 120, line 21.

23 THE COURT: Page 120, did you say.

24 MR. KATZ: Yes, your Honor. 120, line 21.

25 THE COURT: 120, line -- I have, the code is



1 different on this. 120?

2 MR. KATZ: Yes, your Honor. I think, I sent you an  
3 email with the designations in it.

4 THE COURT: I don't see any objections designated  
5 here. What are you objecting to.

6 MR. KATZ: 120, line 21 through 124, 25. It is  
7 irrelevant. There is no foundation, no personal knowledge.  
8 Rule 401, 403, 602.

9 THE COURT: Page 120, line 21. To where?

10 MR. KATZ: To 124, line 5.

11 THE COURT: Line 5.

12 MR. KATZ: Yes, your Honor.

13 THE COURT: What is your position.

14 MR. PRESS: This is where the witness was  
15 testifying about the fact they asked ALPA to reimburse there  
16 out-of-pocket expenses to run the play and he came to find  
17 out that would have violated the law if such a payment had  
18 been made.

19 MR. KATZ: He didn't get that from ALPA. He is  
20 making legal conclusions based on his research, not anything  
21 ALPA said to him. I think his musings as to what the law  
22 requires are irrelevant and lacking in foundation. It is  
23 legal conclusions from a layman.

24 MR. PRESS: He says more than just that, Judge, in  
25 that sequence.

1 MR. KATZ: The lines 124, 6 to 9 are the only thing  
2 that I think matter, "They never told you anything why they  
3 weren't paying you. No. No. We assumed. We understood it  
4 was a difficult situation. That "that is really all that is  
5 relevant, that he wasn't paid and he didn't know, no one told  
6 him why. The rest of it is his speculations and internal  
7 imagination."

8 THE COURT: You have a counter designation on page  
9 124, line 10, to 126, line 7.

10 MR. KATZ: 124, 6, to 125, 3. Is what we wanted to  
11 get in.

12 THE COURT: That is not what you had here. Here  
13 you are counter designation with your code, your pink code,  
14 is 124, line 10, through 1 6, line 7.

15 It is marked in your code here. Do you care if he  
16 adds that.

17 MR. PRESS: I prefer it not be in. This is a man  
18 on their witness list. Mark Hunnibell. They can ask him  
19 whatever question they want.

20 MR. KATZ: I don't think it is fair showing him  
21 talking about whether he made a reimbursement request without  
22 the part that says we never got a dime.

23 THE COURT: What I am going to do is as follows: I  
24 am going to overrule the objection that wasn't on here but it  
25 has just been made. But I am going to allow the counter

1 designation, the addition.

2 MR. PRESS: The counter designation that they made  
3 in an email over the weekend, Judge, was paid 124, line 6,  
4 through page 125, line 3. Dan, is that what you want in it?

5 MR. KATZ: What was it you were ruling on, your  
6 Honor.

7 THE COURT: Well, why I am getting different --

8 MR. PRESS: I just want to make sure --

9 THE COURT: What is it you want, Mr. Katz.

10 MR. KATZ: 124, line 6 to 125, line 3.

11 THE COURT: You get that.

12 MR. KATZ: Thank you.

13 THE COURT: Okay.

14 MR. KATZ: We have an objection on page 145, your  
15 Honor. Starting at line 20.

16 THE COURT: Not on here. 145, line what?

17 MR. KATZ: 20.

18 THE COURT: To? Was.

19 MR. KATZ: To 146, line 5. It is about redactions.  
20 These are redactions ALPA made. I don't see why the witness  
21 should question about that in front of the jury.

22 THE COURT: The only question here is did Mark  
23 Hunnibell have anything to do with it.

24 MR. PRESS: No, no.

25 THE COURT: Whatever redaction was made.

1 MR. PRESS: No, he didn't.

2 THE COURT: I will allow that. What is next?

3 MR. KATZ: 146, 20 to 25. The same issue.

4 THE COURT: Yeah, I saw that many times. 146 what?

5 MR. KATZ: 20 through 25.

6 THE COURT: 146.

7 MR. KATZ: Yes, your Honor. He is talking about  
8 the redactions again that he didn't make.

9 THE COURT: Well, he says, he says he couldn't find  
10 anything, he couldn't identify thinking that was redacted.

11 MR. KATZ: That's right.

12 THE COURT: I am going to allow that. What is  
13 next?

14 MR. KATZ: 147, 11.

15 THE COURT: Yes.

16 MR. KATZ: Through 148, line 3. This is the same  
17 issue again about redactions that ALPA made to protect the  
18 identity of the apparent card signers.

19 THE COURT: I am going to allow that.

20 MR. KATZ: Page 219, 8.

21 THE COURT: 219. None of these are objections here  
22 on your sheet.

23 MR. KATZ: They are in an attachment to an email.

24 THE COURT: Go ahead. Give it to me. I will rule  
25 on it.

1 MR. KATZ: 219, 8, to 220, 15.

2 THE COURT: 219, 8, to what?

3 MR. KATZ: 220, 15.

4 THE COURT: 220, 15. Let me look at this.

5 (Pause)

6 MR. KATZ: We will withdraw that, your Honor. The  
7 last one is 224.

8 MR. PRESS: That is out. We deleted that.

9 MR. KATZ: That takes care of Hunnibell.

10 THE COURT: The whole page is out?

11 MR. PRESS: From -- yes.

12 THE COURT: The whole page was marked, from one  
13 line to 20.

14 MR. KATZ: On Saturday he dropped he dropped 220 to  
15 the end.

16 THE COURT: All right. That is out.

17 MR. KATZ: That covers Hunnibell.

18 THE COURT: So we are going to do Rachford, done,  
19 Hunnibell, done, Clark, done. So let's proceed with those.

20 MR. PRESS: Good. Thank you, Judge.

21 Oh, will will need a few minutes to make the  
22 corrections to Hunnibell that we just talked about.

23 THE COURT: Okay. We will give you whatever you  
24 need.

25 MR. KATZ: We aren't starting with Hunnibell.

1 THE COURT: We are starting with Rachford.

2 MR. PRESS: If we take a break after Rachford then  
3 he can do it after that.

4 MR. KATZ: We are going to need a break after  
5 Rachford.

6 THE COURT: We have more of Rachford.

7 MR. PRESS: There is a half hour left of that.

8 THE COURT: We only went to page 26. 26, line 1.  
9 Which is where we left off on Thursday. And go ahead. Let's  
10 bring the jury in.

11 (The jury enters the courtroom.)

12 THE COURT: Good morning. Everybody. Sorry for  
13 the delay. We were working out here, believe me.

14 THE CLERK: They want you to turn up the volume on  
15 the video.

16 THE COURT: Ladies and gentlemen, you heard your  
17 master's voice, the way the old dog looking at the Victrola  
18 used to be, RCA, you heard your master's voice. Turn it up.

19 Everyone please be seated. Okay. Mr. Press, just  
20 announce what you are doing.

21 MR. PRESS: We are going to resume and conclude the  
22 video deposition of Captain Tom Rachford. Before doing that,  
23 Judge, I would like to move for the admission of the exhibits  
24 he will be referring to. I don't think there is any  
25 objection. It is plaintiff's exhibit 20, plaintiff's exhibit

1 243, plaintiff's exhibit 244, and plaintiff's exhibit 245.

2 MR. KATZ: ALPA has no objection to those exhibits,  
3 your Honor.

4 THE COURT: The four of them.

5 MR. PRESS: Yes.

6 THE COURT: Thank you very much.

7 (Videotape of.

8 THE COURT: P 20, 243, P-244, P-245, are in  
9 evidence.

10 MR. PRESS: Thank you, your Honor.

11 (Videotape of Thomas Rachford, continues).

12 MR. PRESS: Your Honor, that is all for that video.

13 THE COURT: Okay.

14 Ladies and gentlemen, we are going to take a break  
15 to line up the next one. So we are going to take a few  
16 minute break.

17 Do not discuss the case among yourselves. Keep an  
18 open mind until you have heard all the evidence.

19 (Jury leaves the courtroom)

20 THE COURT: You I want to read into the record the  
21 pages that I thought were read from Rachford. I think I read  
22 up to page 26, 1 Thursday. I won't repeat that. But today  
23 the lines, pages and lines that were read are as follows:  
24 Except there are four or five or six times where Mr. Connell  
25 and objected as to form.

1 THE COURT: Don't omitting that, even though you  
2 did edit it out for the record. It is important for the  
3 Circuit, his objections as to form were edited out.

4 Here we go. 26, line 3, to 26, line 17.

5 26, line 19, 26, line 21 to 27, line 14.

6 27, line 17, to 27, line 22.

7 27, line 24, to 28, line 2.

8 29, line 6, to 29, line 15.

9 30, line 12, to 31, line 4.

10 31, line 6 to 31, line 22.

11 32, line 18, to 32, 21.

12 32, 23 to 33, 12.

13 33, 14, to 34, 4.

14 34, 9, to 34, 23.

15 35, 3, to 35, 8.

16 35, 25, to 37, 8.

17 37, line 11, 37, 13, to 37, 14.

18 37, 25, to 39, 13.

19 40, line 6 to 8.

20 40, lines 10 to 13.

21 40, line 16 to 44, line 21.

22 44, line 24 and 25.

23 45, lines 2 to 6.

24 54, line 23, to 56, line 10.

25 56, lines 18 to 25.



1 57, 11, to 57, 16.

2 58, 6, to 59, 1.

3 60, 10, to 62, 2.

4 68, 3, to 68, 25.

5 82, 5, to 82, 13.

6 83, 1, to 83, 18.

7 83, 24 to 88, 22.

8 90, line 5, to 91, line 3.

9 137, line 6, to 138, line 11.

10 138, lines 13 and 14.

11 138, lines 16 to 24.

12 139, line 6, to 139, line 21.

13 139, line 24, to 141, line 19.

14 Okay. Now, what is the next one you are going to  
15 play?

16 MR. PRESS: Mark Hunnibell.

17 THE COURT: Okay. I want to find it. Is that  
18 10/24/06?

19 MR. PRESS: Yes, your Honor.

20 THE COURT: That is the only volume --

21 MR. PRESS: Yes.

22 THE COURT: Okay. Well, that is ready -- as soon  
23 as she finishes --

24 MR. PRESS: Will has to make the edits we discussed  
25 this morning.

1 THE COURT: Okay. Well, I will go off, I will get  
2 off the bench. When you are ready, just tell Larry and we  
3 will plunge ahead.

4 MR. PRESS: Great. Thank you, Judge.

5 (Recess)

6 (The jury enters the courtroom.)

7 THE COURT: Mr. Press, you may proceed.

8 MR. PRESS: Ladies and gentlemen, joining us at  
9 counsel table is captain Mike McDonald, just so you know who  
10 that is.

11 Our next witness is a video of Mark Hunnibell.  
12 Before we start, Judge, we would move for the admission of  
13 the exhibits referenced in the deposition clips which I don't  
14 believe there is any objection to.

15 MR. KATZ: ALPA doesn't object.

16 THE COURT: Give me the plaintiff's --

17 MR. PRESS: Plaintiff's exhibit 3, plaintiff's  
18 exhibit 5, plaintiff's exhibit 6, plaintiff's exhibit 8.  
19 Plaintiff's exhibit 11. And plaintiff's exhibit 16.

20 MR. KATZ: What happened to number 9?

21 MR. PRESS: Is there a 9?

22 MR. KATZ: There was this morning when you showed  
23 it to me.

24 In any event, ALPA doesn't object to the ones that  
25 counsel just listed.

1 THE COURT: I will put in 9, if he offers it.

2 MR. PRESS: I should have a 9? Apparently I have a  
3 9. I don't. Well, we will get it.

4 THE COURT: Well, I will assuming you will add it.  
5 P 9 in evidence.

6 MR. KATZ: We also don't object to that one, your  
7 Honor.

8 THE COURT: Thank you very much, Mr. Katz.

9 MR. PRESS: Thank you, your Honor.

10 MR. PRESS: Here is P 9.

11 THE COURT: Okay.

12 (Video of Mark Hunnibell played)

13

14 MR. KATZ: I object at this point. Can you stop  
15 the tape.

16 THE COURT: Stop the tape.

17 MR. KATZ: The remainder was to be excluded.

18 MR. PRESS: No, it wasn't.

19 MR. KATZ: Starting at 219, 8.

20 MR. PRESS: That was not your ruling, your Honor.

21 THE COURT: I don't have that here.

22 MR. KATZ: It was withdrawn, your Honor.

23 THE COURT: Let me look at it a minute.

24 THE COURT: I am going to allow lines 8 through 23  
25 on page 219. We are not there yet. We stopped. I will

1 allow it to go to line 23. I am going to sustain the  
2 objection from page 219, line 24, to 220, line 15.

3 MR. KATZ: Thank you, your Honor.

4 MR. PRESS: We would just P conclude it now, Judge.

5 THE COURT: Well, you still have four or five lines  
6 left. You stopped it at line 12. I will allow it to line  
7 23.

8 THE COURT: You have it designated.

9 MR. PRESS: I won't let it.

10 THE COURT: What line your stopping at, 12? 219,  
11 12?

12 MR. PRESS: Yes.

13 THE COURT: Okay.

14 MR. PRESS: That is all that we had for Mark  
15 Hunnibell.

16 THE COURT: Let's take a break, it has been an hour  
17 and 15 minutes. We will take a break, and start up with the  
18 next one. Do not discuss the case among yourselves. Keep an  
19 open mind until you have heard all the evidence.

20 (Jury leaves the courtroom)

21 THE COURT: I want to read in the pages that were  
22 played. I kept track of them.

23 Page 5, line 10, to 5, 21.

24 Page 8, line 24 to page 12, line 10.

25 Page 15, line 13 to page 15, line 22.

1 Page 22, line 12, to 26, line 7.

2 Page 50, line 4, to 54, line 23.

3 58, 7, to page 61, 3.

4 Page 63, line 3, to page 66, line 24.

5 Page 67, line 14, to page 69, line 12.

6 Page 71, line 8, to page 73, line 2.

7 Page 75, line 5, to page 75, line 21.

8 Page 90, line 24, to page 91, line 19.

9 Page 96, line 21, to page 97, line 23.

10 Page 104, line 6, to 106, line 9.

11 Page 109, line 9, to 110, line 14.

12 Page 119, line 21, to page 124, line 9.

13 Page 124, line 10, to page 125, line 3.

14 Page 129, line 16, to page 133, line 4.

15 Page 134, line 11, to page 135, line 21.

16 Page 143, line 2, to page 148, line 3.

17 Page 149, line 21, to page 150, line 8.

18 Page 154, line 20, to page 160, line 17.

19 Page 164, line 2, to page 169, line 6.

20 Page 185, line 14, to page 186, line 6.

21 Page 218, line 9, to page to page 219, line 12.

22 Okay. Mr. Press, what is your next tape?

23 MR. PRESS: Mr. Hunnibell referenced a video played  
24 at the September 8, 2000, board meeting. It is 16 and a half  
25 minutes long.

1 THE COURT: We want to offer that.

2 THE COURT: What is it?

3 MR. PRESS: Exhibit P-427, Judge.

4 THE COURT: That that has not been in evidence.

5 MR. PRESS: No.

6 THE COURT: I think we got up close to that number,  
7 four 26.

8 MR. PRESS: Thinks the ALPA 70 anniversary video  
9 played to the APA board in September, 2000.

10 MR. KATZ: ALPA does not object to that exhibit,  
11 your Honor.

12 THE COURT: Okay. Well, 426?

13 MR. PRESS: 427.

14 THE COURT: 427. All right. I see that. Okay.  
15 That is going to be in evidence.

16 MR. PRESS: Your Honor, may I just make a prefatory  
17 description of the video before we play it?

18 THE COURT: Tell me what it is.

19 MR. PRESS: I all I want to say is what we will  
20 play next is the ALPA 70th Anniversary video which Mr.  
21 Hunnibell testified was shown to the APA board in September,  
22 2000. That is all I would say.

23 THE COURT: Okay. Well, that is only going to take  
24 16 minutes. That is okay. It is going to take 16 minutes.

25 MR. PRESS: 16 minutes, 36.

1 THE COURT: Who is next after that.

2 MR. PRESS: John Clark.

3 THE COURT: Okay. And then will be John Clark.

4 Are there exhibits for John Clark you want to use?

5 MR. PRESS: Yes.

6 THE COURT: Why don't we do that now and get that  
7 out of the way.

8 MR. KATZ: Judge Irenas, can we go back to  
9 something with regard to the lines that you just read into  
10 the record as being shown on. On Saturday, Mr. Press sent an  
11 email in which some of those were deleted and in fact they  
12 were not shown --

13 THE COURT: Which one?

14 MR. KATZ: Line page 10, line 8, through 11, line  
15 17.

16 THE COURT: Page what?

17 MR. KATZ: Page 10, line 8, to 11, line 17.

18 THE COURT: Just a minute.

19 MR. KATZ: That's correct, isn't it.

20 MR. PRESS: Yes.

21 MR. KATZ: That was not shown.

22 THE COURT: I must be following from the marked  
23 copy.

24 MR. KATZ: Page 10, line 8, to page 11, line 17.

25 THE COURT: Page 10, line 8, to what?

1 MR. KATZ: 11, line 17.

2 THE COURT: Not shown.

3 MR. KATZ: Correct. Also.

4 THE COURT: Okay.

5 MR. KATZ: Also, page 69 --

6 THE COURT: Just a minute. Let me get to that.

7 All right. I have that.

8 MR. KATZ: Page 69, line 17 to 71, line 7.

9 THE COURT: 69, 17?

10 MR. KATZ: That's correct.

11 THE COURT: To what?

12 MR. KATZ: Page 71, line 7.

13 THE COURT: Just a minute. 69, line 17, I don't  
14 have listed as being shown here. I didn't read that off as  
15 being shown. I went 67, line 14, to 69, line 12. I don't  
16 have 69, 17, as having been shown. I didn't read that off as  
17 being shown. I read, let me go back. 63, line 3, to 66,  
18 line 24. 67, 14, to 69, 12. And the next one I pick up is  
19 71, 8.

20 MR. KATZ: Okay, fine.

21 THE COURT: Okay. So I didn't show the part you  
22 said shouldn't be shown.

23 MR. KATZ: Right.

24 THE COURT: Okay. What is next?

25 MR. KATZ: Let me ask Mr. Press, was there anything



1 else that was dropped off that was incorrect on the judge's  
2 itemization of what was shown?

3 MR. PRESS: As far as we know, Mr. Katz has said it  
4 correctly.

5 THE COURT: I said it correctly.

6 MR. PRESS: Both of you together did, yes.

7 MR. KATZ: Fine. Thank you, Judge Irenas.

8 THE COURT: The only thing I will omit is line,  
9 page 10, line 8, to 11, line 17.

10 MR. KATZ: Fine.

11 THE COURT: Okay.

12 MR. KATZ: Fine. Thank you, Judge Irenas.

13 THE COURT: All right. Let's take, so you are  
14 going to do P-427 and then we will start with John Clark.

15 MR. PRESS: Correct.

16 THE COURT: Okay. Let me make sure I can find  
17 Clark.

18 Come hither, Mr. Clark. I was looking at it this  
19 morning so I know it is here.

20 (Pause)

21 THE COURT: I found it. Let's take a ten-minute  
22 break.

23 MR. KATZ: With you tell us what exhibits will come  
24 in with that.

25 THE COURT: Let's do that. Read them.

1 MR. PRESS: Plaintiff's 34. P-38.

2 THE COURT: Just two?

3 MR. PRESS: No. P 15. P 40.

4 THE COURT: P 40.

5 MR. PRESS: And P 41.

6 THE COURT: And P 41. Any objection?

7 MR. KATZ: I have to take a look at them. Do you  
8 have a copy of them made?

9 MR. PRESS: Yes.

10 MR. KATZ: Thank you.

11 (Pause)

12 MR. KATZ: Your Honor, could I respond to this  
13 after the break?

14 THE COURT: All right.

15 MR. KATZ: I think these concern some of the areas  
16 where I made objections.

17 THE COURT: All right.

18 MR. PRESS: Judge, those exhibits referred to in  
19 the transcript, there was no objection to the testimony  
20 regarding the exhibits. They should come in.

21 THE COURT: Well, I am not saying they are not  
22 coming in.

23 MR. KATZ: I am not saying I am going to object.

24 THE COURT: He asked if he can put his position on  
25 the record after I come back in. That is all he has asked.

1 I am I am not saying they are not coming in. I don't know.

2 I will hear what he has to say.

3 MR. PRESS: Thank you.

4 THE COURT: I don't know what he is going to say.

5 MR. PRESS: Okay.

6 THE COURT: All right. Let's take ten minutes.

7 (Recess)

8 MR. KATZ: Judge Irenas.

9 THE COURT: I want to wait to make sure everybody  
10 is here.

11 Okay. Go ahead.

12 MR. KATZ: ALPA does not object to those exhibits,  
13 your Honor.

14 THE COURT: Okay. Then, P 34 through 38. P 15, P  
15 40, and P 41 are in evidence.

16 Okay. Now you can bring the jury in. Mr. Press,  
17 you will announce as you did before the video, the short 16-  
18 minute video you are going to play.

19 MR. PRESS: Correct.

20 THE COURT: Then we will go on to Mr. Clark.

21 (The jury enters the courtroom.)

22 THE COURT: Okay. Mr. Press, you may introduce  
23 your exhibits.

24 MR. PRESS: The next thing we are going to play is  
25 another video. This is the ALPA 70th Anniversary video which

1 Mark Hunnibell just testified was played to the APA board as  
2 part of Duane Worth's presentation in September, 2000. We  
3 are going to play that video.

4 (Video played)

5 Mr. Press.

6 MR. PRESS: Our next witness is John Clark, again  
7 by video. It was taken in Lake Tahoe, Nevada.

8 (Video of John Clark played).

9 MR. PRESS: That is all we have of Mr. Clark.

10 THE COURT: Ladies and gentlemen, let's take a  
11 little break, now.

12 Do not discuss the case among yourselves until you  
13 have heard all the evidence.

14 (The jury leaves the courtroom.)

15 THE COURT: I am going to read the sections that I  
16 believe were played for the record, so later on we will know  
17 what has been played. This is John Clark. December first,  
18 2006, deposition.

19 Page 10, line 25 to page 11, line 1.

20 Page 15, line 5 to page 15, line 11. Page 16, line  
21 14 to page 18, line 20.

22 Page 19, line 6, to page 19, line 23.

23 Page 20, line 16, to 21, line 1.

24 25, line 11, to 25, line 23.

25 28, line 1, to 28, line 18.

1 Page 39, line 22, to page 40, line 22.

2 Page 49, line 9, to 49, line 14.

3 Page 50, lines 1 to 3.

4 Page 50, line 10, to page 50, line 20.

5 Page 51, line 6, to page 52, line 19.

6 Page 68, line 1, to page 70, line 14.

7 Page 76, line 11, to page 77, line 16.

8 Page 89, line 6, to page 89, line 19.

9 Page 96, 7, to page 97, 19.

10 Page 97, 24, to page 99, 5.

11 Page 99, 15, to page 100, line 16.

12 Page 102, line 3, to 106, line 5.

13 Page 106 line 18 to page 106 line 25.

14 Page 107, line 1, to page 109, line 15.

15 Page 109 line 20 to page 100 10, line 7.

16 Page 100120, line 7, to page 122, line 7.

17 Page 125, lines 22 to 25.

18 Page 127, line 13, to page 128, line 4.

19 Page 128, line 12, to page 129, line 4.

20 Page 131, line 18, to page 133, line 4.

21 Page 134, line 23, to page 135, line 18.

22 Page 140, line 10 to 18.

23 Page 141, 2, to page 143, line 1.

24 Page 143, lines 8 to 19.

25 Page 144, lines 16 through 19.

1 Page 144, line 23 to page 145, line 5.

2 Page 145, line 12, to page 148, line 5.

3 Page 148, line 19, to page 149, line 3.

4 Page 157, line 25, to page 164, line 16.

5 Page 166, line 8, to page 168, line 14.

6 Page 168, line 24, to page 169, line 19.

7 Page 169, line 22, to page 171, line 16.

8 Page 171, line 24, to page 172, line 11.

9 173, line 24, to page 1 80, line 2.

10 Page 1 80, line 20, to page 182, line 9.

11 That is it. Now --

12 MR. KATZ: No corrections.

13 THE COURT: You tend to follow this thing with a  
14 fine tooth coal.

15 MR. KATZ: I was following along, I have no  
16 connections.

17 THE COURT: Okay, Mr. Press.

18 MR. PRESS: Question, it is fine. We did not move  
19 the admission of exhibit P 27 which was referred did by Mr.  
20 Clark and I didn't include that with the package.

21 THE COURT: No, it was not on the list. You want  
22 to offer P 27.

23 MR. PRESS: Yes.

24 THE COURT: Mr. Katz, any objection?

25 MR. KATZ: No objection.

1 THE COURT: Okay, P 27 will be in evidence with the  
2 other ones.

3 A trial is like flying. 99 percent sheer boredom  
4 interspersed by one percent pure terror.

5 THE COURT: What is next?

6 MR. PRESS: Jerry Mugurditchian. Last night I  
7 shortened it some more to something I have not informed you  
8 or Mr. Katz of.

9 THE COURT: Let me get it out.

10 Okay. Maybe the way to do this is, it is a fairly  
11 short deposition. This is November 9, 2006.

12 MR. PRESS: Yes.

13 THE COURT: Okay. You said you shortened it. That  
14 is fine. That is your privilege. Mr. Katz, where do you  
15 object?

16 MR. PRESS: I think it is all resolved.

17 THE COURT: It is all resolved.

18 MR. KATZ: I just had a couple of objections.

19 THE COURT: Why don't you point them to me and we  
20 will find out if they are resolved.

21 MR. KATZ: Page 146.

22 THE COURT: I am sorry. Page 146?

23 MR. PRESS: We took that out.

24 MR. KATZ: You took that out.

25 MR. PRESS: Yes.

1 THE COURT: 146, was that lines 18 through 20.

2 MR. KATZ: Yes.

3 THE COURT: That is out.

4 MR. KATZ: Page 148, line 6 owe on owe.

5 THE COURT: You of line 6 through 11.

6 MR. PRESS: That was removed.

7 MR. KATZ: Okay.

8 THE COURT: I have the word grant to both of those.

9 I would have granted his motion as to both of those. Not  
10 that it matters. I have my notes on that.

11 MR. KATZ: Those were the only two objections.

12 THE COURT: Those are the only two. Okay. To the  
13 extent you shortened it, I will keep track as we go along.

14 MR. PRESS: I did can tell you the page and line.

15 MR. KATZ: We would like to know that.

16 THE COURT: Okay.

17 MR. PRESS: Page 13, line 21.

18 THE COURT: Just a minute. Let me get to this.

19 MR. KATZ: These are deletions, correct?

20 MR. PRESS: Right.

21 THE COURT: 13, 21.

22 MR. PRESS: Through 16, line 22.

23 THE COURT: Page 16 -- that is out, all of it?

24 MR. PRESS: Yes.

25 THE COURT: That is a big hunk.



1 MR. PRESS: Three pages.

2 THE COURT: Yes. More than three pages. What  
3 else.

4 MR. PRESS: That is it.

5 THE COURT: Okay. You have Mr. Katz --

6 MR. KATZ: We don't object to that deletion.

7 THE COURT: I didn't think you would object to a  
8 deletion. That is fine with me. Let's take another five  
9 minutes, if you have to go to the bathroom or anything, we  
10 will come back at one o'clock and finish up.

11 (Recess)

12 (Jury enters the courtroom.)

13 THE COURT: Ladies and gentlemen, we are not going  
14 to be sitting tomorrow. We are going to come back Wednesday.  
15 I have to go for tests up in North Jersey. They are  
16 searching for signs of life. And we don't know whether they  
17 will find it or not. But they are going to try.

18 So I have two different tests on my ticker, so I  
19 will see you Wednesday, when you leave today you are off  
20 tomorrow. We will resume Wednesday at 8:30. So, okay.

21 Mr. Press.

22 MR. PRESS: Thank you, Judge. Our next witness is  
23 a short video clip from the deposition of Jerry  
24 Mugerdictchian, which we took in Daytona Beach, Florida.

25 (Deposition of Jerry Mugerdictchian played)

1 MR. PRESS: That is all we have from that  
2 deposition.

3 THE COURT: Okay. Thank you very much.

4 What is next? First of all, are there any  
5 documents with that one?

6 MR. PRESS: No, there was not.

7 THE COURT: Okay. Before you bore the jury, let me  
8 read the citations, the portions that were played.

9 Page 4, line 3 to page 5, line 6.

10 Page 6, line 5 to page 6, line 13.

11 Page 6, line 20 to page 6, line 24.

12 Page 129, line 1, to 130, line 24. 137, line 12 to  
13 line 22.

14 138, line 18 to 140, line 16.

15 141, line 1 to 146, line 17.

16 146, line 21, to 147, line 12.

17 Line 147, line 16, to 148, line 5.

18 149, line 12 to 152, line 5.

19 153, line 7 to 154, line 1.

20 155, lines 4 to 9.

21 155, lines 15 to 23.

22 Page 166, lines 11 to 23.

23 Okay. I am sorry. What is next?

24 MR. PRESS: Another short clip from a deposition of  
25 Seth Rosen that we took in Washington, DC.

1 THE COURT: Okay. Before you start that let me get  
2 that out.

3 (Pause)

4 THE COURT: Okay. I have it.

5 (Go ahead.

6 (Videotape of Seth Rosen played)

7

8 MR. PRESS: Your Honor, that concludes that  
9 deposition.

10 THE COURT: Okay. Are you playing anything further  
11 today or is this what you are replying for the day.

12 MR. PRESS: We hoped to get on to some more. It is  
13 quarter to two. We are prepared to go on.

14 THE COURT: What would be next?

15 MR. PRESS: Ron Rindfleisch.

16 THE COURT: That is long.

17 MR. PRESS: It is.

18 THE COURT: Let's start Rindfleisch fresh so the  
19 jury doesn't have to go two days to remember twelve minutes  
20 of it. We will start Wednesday with Rindfleisch.

21 MR. PRESS: Yes.

22 THE COURT: Ladies and gentlemen, my deep things  
23 for your continued participation and your interest and your  
24 attention. Do not discuss the case among yourselves. Keep  
25 an open mind. Do not discuss the case among your friends,

1 loved ones, bus drivers, space aliens, garbage men, anybody.

2 Don't discuss the case with anybody.

3 Again, keep an open mind. Have a very safe trip  
4 home and a very safe trip in Wednesday morning. I will see  
5 you at 8:30 Wednesday morning.

6 (The jury leaves the courtroom.)

7 THE COURT: Okay. I want to read the line and, the  
8 page and line references for Seth Rosen. What day was his  
9 deposition?

10 MR. KATZ: August 26, 2008.

11 THE COURT: August 26, 2008. Okay. Page 6, line  
12 10, to page beings seven, line 3.

13 Page 9, line 17, to page 13, line 17.

14 Page 17, line 23, to page 18, line 22.

15 Page 31, line 15, to page 33, line 23. Page 134,  
16 line 11, to page 137, line 24.

17 Page 138, line 16, to page 140, line 10.

18 Page 143, line 15, to page 144, line 9.

19 Page 150, line 15, to page 151, line 11.

20 Page 166, lines 5 to 19.

21 Anybody have any problem with that?

22 MR. KATZ: No, your Honor.

23 MR. PRESS: No, Judge.

24 THE COURT: Mr. Press, is that okay?

25 MR. PRESS: Yes, yes, fine.

1 THE COURT: Now, Rindfleisch which I have here, you  
2 September it to me. I wasn't able to print it out until this  
3 morning. Are we dealing with just one volume, two volumes?

4 MR. PRESS: It will be two volumes, Judge. His  
5 initial deposition and whatever it was, oh six.

6 THE COURT: I have a very large deposition that was  
7 taken, I think it was emailed to me over the weekend. August  
8 27, 2008.

9 MR. PRESS: That was the second deposition. We  
10 have designations from his first and second depositions.

11 THE COURT: And the first.

12 MR. PRESS: In oh six, I think November time  
13 period.

14 MR. KATZ: The first was November 13, 2006.

15 THE COURT: I have it. Again, I think it was  
16 emailed to me.

17 The copy I have has, in fact, neither copy has  
18 designations or objections or anything like that. Where are  
19 they contained, in another document?

20 MR. PRESS: Your Honor, Friday we intended to  
21 deliver marked up copies of those. Both transcripts for you.

22 THE COURT: I take it back. I have Ron  
23 Rindfleisch, August 27, 2008. That is marked up.

24 MR. PRESS: All right.

25 THE COURT: I have that. What about the November

1 13?

2 MS. ACCHIONE: That was delivered on Friday as well  
3 to your law clerk.

4 THE COURT: Can you believe it? I have that, too.

5 Okay. Are you, is there areas now that you are  
6 still in dispute on?

7 MR. KATZ: Yes, your Honor. On Saturday I sent an  
8 email to the Court and opposing counsel listing the  
9 objections and one page that we wanted to add for  
10 completeness.

11 THE COURT: That is on Hunnibell.

12 MR. KATZ: On Rindfleisch. There are only two  
13 objections on the 2006 deposition. But there is --

14 THE COURT: I am sorry to say I don't have -- I am  
15 sure you sent it to me. But I can't put my hand on it. Do  
16 you have another copy?

17 MR. PRESS: I do, Judge. This email from Mr. Katz  
18 has objections to it. Rindfleisch one, and then we have this  
19 chart from Mr. Katz for objections to Rindfleisch two. There  
20 seems to be a lot.

21 THE COURT: Rindfleisch one.

22 Is that one 72, line 11?

23 MR. KATZ: That's correct, your Honor. Similar to  
24 the problem we talked about earlier today where the  
25 examination concerns redactions, and deletions from documents

1 the witness wasn't involved in. The same thing is true of  
2 the other one at page 198. We just don't see that as being  
3 relevant.

4 THE COURT: This is the August 27, 2008?

5 MR. KATZ: No, no. This is, I am talking about  
6 November 13, 2006.

7 THE COURT: Okay.

8 MR. KATZ: There were only two objections on that  
9 one and no additions that we are seeking to put in.

10 THE COURT: 172, line 11.

11 MR. KATZ: To 174, line 13.

12 THE COURT: First of all, what is Mr. Press's  
13 position?

14 MR. PRESS: The testimony is relevant and should be  
15 admitted. He has two pages that he has marked as objecting  
16 to having. I am not really clear specifically what it is he  
17 is trying to keep out and on what ground.

18 MR. KATZ: It is, it all concerns really the  
19 spoliation issue that the Court has ruled is not part of the  
20 case.

21 THE COURT: Well, I ruled that there wasn't going  
22 to be a charge to the jury on spoliation. That doesn't mean  
23 I was going to bar all testimony about, you know, what are in  
24 documents, where they are, why they are not available. You  
25 don't get a free pass when documents disappear or are

1 modified or re /TKABLGD or destroyed.

2 MR. KATZ: This is a document that was supplied  
3 during discovery that was redacted at least in one form that  
4 that was /PREUD to the plaintiff's. The witness didn't  
5 redact anything. And the issue is really misleading and  
6 inflammatory in that it doesn't back any relevance to  
7 anything that Mr. Rindfleisch did or was involved in. At one  
8 point during the case certain of the email --

9 THE COURT: What is it in here that he is not  
10 allowed to show, that the document is inaccurate or it has  
11 been edited, things that dropped out. Why isn't he entitled  
12 to show that? You produce the document, if you produce a  
13 document to him that is not complete or in its original form,  
14 why why isn't he allowed to explore as best he can what  
15 happened to it.

16 MR. KATZ: He is certainly allowed to explore it in  
17 discovery. Later in discovery the complete over.

18 THE COURT: This is discovery, this is discovery.

19 MR. KATZ: Later in discovery the document was  
20 supplied in its complete form so there is not really a  
21 mystery about what happened here. It is misleading to the  
22 jury.

23 THE COURT: Is that true? You do have it in its  
24 complete form.

25 MR. PRESS: Yes, it was later produced that way.



1 Yes. That is one of the reasons why he was redeposed.

2 THE COURT: I am missing something. You have a  
3 document, obviously you have a complete and accurate copy.  
4 Why would you send a butchered copy to him?

5 MR. KATZ: It was a mistake in the discovery  
6 process, and later --

7 THE COURT: A mistake in the discovery process.

8 MR. KATZ: It was an over zealous redaction. At  
9 some point we corrected that during the discovery process and  
10 completely disclosed the entire document.

11 THE COURT: And that led to another lengthy  
12 deposition.

13 MR. KATZ: I think the deposition was called, the  
14 second deposition was called for other reasons, your Honor.  
15 But in terms of misleading the jury beings I think taking a  
16 document in one form that it was produced in discovery and  
17 showing it --

18 THE COURT: That is something you can deal with. I  
19 mean. You are certainly entitled to show that you produced  
20 the complete document. I don't find it unduly inflammatory  
21 by the way in the context of this case, whether this document  
22 is complete or incomplete, I suspect, is not a major issue.  
23 What is 198?

24 MR. KATZ: It is the same thing, a similar kind of.

25 THE COURT: 7, 8 lines.

1 MR. KATZ: A similar kind of an issue, your Honor.

2 THE COURT: Let me take a look at it.

3 THE COURT: 13 to 21?

4 MR. KATZ: Yes, your Honor.

5 THE COURT: He can ask the witness if he has seen a  
6 copy of the document unredacted. I am not going to -- I am  
7 not granting either of those objections so the, I am denying  
8 them both. So the first of these, this is the volume you are  
9 going to do first?

10 MR. PRESS: Yes.

11 THE COURT: November 13, 2006.

12 MR. KATZ: That is ready to go.

13 THE COURT: That is ready to go. Now, the August  
14 27, 2008, there are numerous objections, maybe not numerous,  
15 but like a dozen or so.

16 MR. PRESS: We were served that list Saturday  
17 afternoon.

18 THE COURT: I have not gotten to it.

19 MR. PRESS: Neither have we, quite frankly.

20 THE COURT: But I will do it some time on Tuesday.  
21 So I am going to take this with me. Wednesday morning, be  
22 here about quarter after, I will give you the rulings on  
23 that.

24 MR. PRESS: Your Honor, as you know, we have  
25 removed some items to be played in light of objections made,

1 and if we decide to do that a, can I email like I did over  
2 the weekend.

3 THE COURT: Yes, you may.

4 MR. PRESS: Okay.

5 THE COURT: You may drop that in the email. In  
6 unredacted form.

7 MR. PRESS: Right.

8 THE COURT: And.

9 MR. PRESS: I will do that this evening.

10 THE COURT: Okay. So you have not yet in a sensory  
11 acted to his comments.

12 MR. PRESS: No, we have not.

13 THE COURT: Okay. All right. If you could do that  
14 today, because I won't get to it until tomorrow.

15 MR. PRESS: I am I will.

16 THE COURT: So if you do that today, when I attack  
17 it, it will be in the afternoon some time tomorrow. I will  
18 have whatever your comments or concessions are. Okay.

19 MR. PRESS: I will do that.

20 THE COURT: Now, after we do Rindfleisch, which is  
21 going to take a fair amount of time, what is next?

22 MR. PRESS: Mike Day.

23 THE COURT: In person?

24 MR. PRESS: In person, yes.

25 THE COURT: After Mr. Day.

1 MR. PRESS: Bob Pastore.

2 THE COURT: In person.

3 MR. PRESS: Yes.

4 THE COURT: After Mr. Pastor.

5 MR. PRESS: Nothing.

6 THE COURT: So basically we have to finish  
7 Rindfleisch's, his two volumes of deposition, and then  
8 Captain Day and Captain Pastore for their --

9 MR. PRESS: That is still. I don't want to mislead  
10 anybody. There is a possibility that pastor won't be here.  
11 So, but the plan is to have him.

12 THE COURT: But if he is not here, are you going to  
13 use another witness?

14 MR. PRESS: No, no.

15 THE COURT: It just means the trial will be a day  
16 or two shorter.

17 MR. PRESS: That is exactly what it will mean.

18 THE COURT: So it looks like you could finish early  
19 this week.

20 MR. PRESS: We could finish Thursday.

21 THE COURT: Depending on, if Pastore and day come,  
22 you think we could finish?

23 MR. PRESS: Not in light of the cross examinations  
24 that I would expect.

25 THE COURT: Yeah. It doesn't seem likely to me

1 that Pastore and day, we could finish by Thursday. But if  
2 only day, only Captain Day, then we would, it would not be a  
3 problem.

4 MR. PRESS: And if the cross was limited I am  
5 confident we can be finished by Thursday.

6 THE COURT: Okay. Which means you have to be ready  
7 Monday to, the following Monday, to begin putting in your  
8 case.

9 MR. KATZ: Mr. Fram would like to --

10 MR. FRAM: Your Honor, based upon the discussion we  
11 had last week we are prepared to start first thing on  
12 Thursday. We were under the impression that they would be  
13 done by Wednesday.

14 THE COURT: How could they do Day, Pastore, and  
15 Rindfleisch on one day?

16 MR. FRAM: Your Honor, it sounds like we are up in  
17 the air on Pastore. If Pastore does not appear, is it okay,  
18 your Honor, if we are prepared to start our case Monday?

19 THE COURT: Sure. You know I like to keep every  
20 minute working.

21 MR. FRAM: That is why we had two people lined up  
22 for Thursday. We will call them off if that is okay.

23 THE COURT: Well, I don't know. Why don't you keep  
24 at least one of them here just in case. I am a little up in  
25 the air myself. What is the timing on Rindfleisch? Have to

1     timed it.

2                 MR. PRESS: I think an hour and 30 on the first  
3     one, and two and a half on the second one.

4                 THE COURT: Again, may be short end as they respond  
5     to Katz's objection. You may wind up with things being  
6     withdrawn. That is more than half of Wednesday right there.

7                 MR. PRESS: Right.

8                 THE COURT: That is three hours. There. It is  
9     hard to imagine even if we had just Captain Day, to finish it  
10    on Wednesday, but I do think if we had just Captain Day, we  
11    might be finished like eleven o'clock on nurse on Thursday.

12                MR. FRAM: Your Honor, we will have one witness  
13    lined up.

14                THE COURT: Have one witness lined up for Thursday.  
15    I don't think you need two. Have one lined up. That will at  
16    least get us started. And then, this may be an unfair  
17    question, but do you have any overall time --

18                MR. FRAM: We do. We are hoping, your Honor, to  
19    have our case finished early the week of July 4. We think we  
20    probably need the fifth and possibly the sixth. But we are  
21    hoping to have our presentation done by then.

22                THE COURT: And of course, he has the right to  
23    rebuttal. I don't know.

24                MR. PRESS: We will have to see what kind of  
25    rebuttal.

1 THE COURT: That is a case I really can't ask. But  
2 it seems like we are moving along very smartly, given what we  
3 anticipated.

4 MR. FRAM: Yes, your Honor.

5 MR. PRESS: Mr. Fram, who would the first witness  
6 be?

7 MR. FRAM: It sounds like the first witness will  
8 probably be David Singer, your Honor. If we have extra time  
9 after Singer we will have videos lined up so we can round out  
10 the day. There is an issue that came up with the videos. We  
11 have December.

12 THE COURT: Your videos.

13 MR. FRAM: Our videos, your Honor. We understand  
14 the ones to fill up entire days. We have Randy Babbitt's  
15 video, and they had designated, we counter designate the in  
16 the pretrial /WERPBGs made the tape, I believe based upon an  
17 email I saw over the weekends the plaintiffs decided, your  
18 Honor, not to call Babbitt by video. I believe there is an  
19 objection now if we play the video. Babbitt is unavailable.  
20 He is currently the administrator of the Federal Aviation  
21 Administration, which as you know.

22 THE COURT: He was ALPA's president prior to  
23 Woerth.

24 MR. FRAM: He was. Then he was a consultant. Now  
25 he is the person primarily responsible for aviation in the

1 entire country.

2 THE COURT: What is his title.

3 MR. FRAM: He is the administrator, your Honor.

4 THE COURT: He is the FAA number 1 guy?

5 MR. FRAM: Number 1 guy. So he is unavailable  
6 because of his responsibilities and as you may know the  
7 government fends off subpoenas, even if he were within 100  
8 fat, the government would fend off subpoenas directed to  
9 government officials.

10 We have the video. I don't understand why there is  
11 any objection to our showing it, beyond the fact that  
12 plaintiffs decided not to show it in their case which was  
13 original originally the understanding. We then have a short  
14 video of Jeff Brundage who is an American official, you heard  
15 him mentioned an on a number of occasions. I don't believe  
16 there are any objections to the substance of his testimony.  
17 But I just want to resolve the issues if there are any about  
18 those two videos, your Honor.

19 THE COURT: Let's take Babbitt number 1.  
20 Practices.

21 MR. PRESS: Babbitt, they made no designations of  
22 Randy Babbitt in the final pretrial order. He is listed as a  
23 live witness. And.

24 THE COURT: By whom?

25 MR. PRESS: By defendant.



1 THE COURT: Yeah, but the fact of the matter is, it  
2 is a fact, do you question anything that Mr. Fram said, he is  
3 the administrator of the FAA.

4 MR. PRESS: No, Judge, I am not questioning any of  
5 that.

6 THE COURT: He lives outside the 100 mile bulge.  
7 Even if he lived within the 100 mile bulge there might be an  
8 issue for somebody that high up in the government. That is a  
9 pretty big position.

10 MR. PRESS: He has been in that position since  
11 before the pretrial order.

12 THE COURT: What?

13 MR. PRESS: He has been in that position quite a  
14 while, Judge.

15 THE COURT: I didn't say he wasn't. I will mean  
16 that is a fact.

17 MR. FRAM: We did designate. Plaintiffs designated  
18 his testimony in the pretrial. We counter designated. We  
19 expected the individual yes tape deposition to go in in their  
20 case. They now made the decision they don't want to play it.  
21 We reserved the right in the pretrial in the witness list  
22 that we submitted a week or so before trial, he is listed as  
23 a witness, and we have indicated there that any witness who  
24 is unavailable will play the testimony. So there is no  
25 prejudice, there is no surprise.

1 THE COURT: Mr. Press, I am having trouble  
2 following the argument. This is somebody that, apparently at  
3 one point you thought you might play. I mean obviously you  
4 have made a tactical or strategic decision not to do that  
5 which is fine with me. I have no problem with that. But if  
6 they want did call him, the rules for unavailability are no  
7 different for you or for Mr. Fram. They are the same.

8 MR. PRESS: The objection is simply that it was not  
9 disclosed in their pretrial order.

10 THE COURT: Well, Mr. Babbitt's role as being a  
11 major player here, if anything, it has been disclosed. I  
12 won't say a major player, but a player. Major maybe is not  
13 right. But as a player, it has been disclosed. Everybody,  
14 that is one name we all know about. There is no secret about  
15 that. He is listed in both of your final pretrial lists.

16 I don't get it, Mr. Press.

17 MR. PRESS: That is fine.

18 THE COURT: I am going to allow Mr. Babbitt to  
19 appear either by, unless he has a change of heart and wants  
20 to come which I don't think is likely, and/or we want to play  
21 his videotape, or individual glow tape dep. What is the  
22 other one.

23 MR. FRAM: Brundage, the American Airlines labor E  
24 U he was the labor relations director of America, corporate,  
25 not APA. He was corporate.

1 MR. FRAM: Yes, your Honor. He was deposed by Mr.  
2 Press. And we have designated some clips from that video,  
3 and we want to play them. I am not clear on why there is an  
4 objection.

5 THE COURT: Is there an objection conceptual to it  
6 being played at all or is the a conception, is there an  
7 objection to specific designations.

8 MR. PRESS: To specific designations. It has been  
9 a while since I looked at it but I know we had serious  
10 problem with much of his testimony.

11 THE COURT: That may be -- Brundage, I don't  
12 remember seeing a transcript of him.

13 MR. FRAM: We weren't aware there were objections  
14 to any of his testimony.

15 MR. PRESS: It is all in the pretrial order, Steve.

16 MR. FRAM: Your Honor, what we need to do is we  
17 will get to you, if not tomorrow, Wednesday.

18 THE COURT: Get me the transcript and maybe the two  
19 of you can mark-up what he objects to, so I can pass on it.

20 MR. FRAM: We will do that. It is fairly short.  
21 It won't take a lot of your Honor's time.

22 THE COURT: I can't imagine Brundage has too much  
23 to say.

24 He may have a little bit to say but he is somewhat  
25 of a peripheral player here.

1 MR. FRAM: We will get that to your Honor.

2 THE COURT: All right. Get it to me. I don't want  
3 to forget Brundage. August 27, 08. Then I have, I thought I  
4 had, I have Katz's objections okay. Anything else?

5 MR. PRESS: No, your Honor.

6 MR. FRAM: I think that covers it. Thank you, your  
7 Honor.

8 THE COURT: I will see you about 8:10, something  
9 like that, Wednesday morning.

10 MR. FRAM: Yes, your Honor.

11 THE COURT: Thank you all very much.

12 By the way, both sides have worked I consider  
13 fairly diligently in moving the trial along. I want to you  
14 know I do appreciate it. I know you fight on a lot of  
15 things, but I thought the spirit of cooperation is just about  
16 where it should be and I appreciate that.

17 (Adjourned at 2:15 p.m.)  
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